



Office of the Attorney General  
State of Texas

March 18, 1992

DAN MORALES  
ATTORNEY GENERAL

Ms. Melissa Winblood  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79999

OR92-102

Dear Ms. Winblood:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 14963.

You have received a request for information relating to a closed murder investigation. Specifically, the requestor seeks the "police report and statements pertaining [to] this case." You have submitted to us for review Exhibits A through E. Although you do not object to release of Exhibits A and D, you claim that Exhibits B, C, and E are excepted from required public disclosure by section 3(a)(8) of the Open Records Act.<sup>1</sup>

Section 3(a)(8) excepts from required public disclosure:

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

---

<sup>1</sup>Your letter states that Exhibit A, a police department death report, and Exhibit D, the requestor's written confession, have already been made available to the requestor. Accordingly, we will not consider the applicability of the Open Records Act to these documents.

Even if a matter is closed, the names of witnesses may be withheld under certain circumstances. Open Records Decision No. 397 (1983) at 2. The names of those persons and their statements may be withheld if it is determined:

from an examination of the facts of the particular case that disclosure might either subject the witnesses to possible intimidation or harrassment [sic] or harm the prospects of future cooperation between witnesses and law enforcement officers.

Open Records Decision No. 252 (1980) at 4; *see also* Open Records Decision No. 397. "When the 'law enforcement' exception is claimed as a basis for excluding information from public view, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how and why release of it would unduly interfere with law enforcement." Open Records Decision No. 287 (1981) at 2.

Exhibit B includes the written statements of nine witnesses. You advise us that the requestor was apprehended on the basis of the witness statements and confessed to murder. Consequently, the witnesses were never required to testify in court, and their statements have never been made public. You further advise us that the requestor is the member of a gang and that release of the witness statements or any other information which might identify the witnesses might result in retaliation against them. We believe you have reasonably explained how release of this information would unduly interfere with law enforcement. Accordingly, the witness statements may be withheld in their entirety under section 3(a)(8).

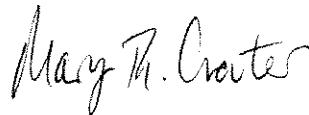
Exhibit C consists of three sworn statements of police officers which reference conversations with or the statements of the witnesses. We conclude that release of the information contained in Exhibit C which would identify or tend to identify the witnesses is protected under section 3(a)(8). For your convenience, we have marked those portions of the documents contained in Exhibit C which may be withheld. The remainder of Exhibit C must be released.

Exhibit E consists of various supplementary police reports. You assert that these records contain information which would identify or tend to identify the witnesses. You also assert that release of these records "would further inhibit future law enforcement," because they reveal the tactics used by a SWAT team in apprehending of the requestor. However, you have not explained how and why these records would reveal SWAT team tactics, nor do the documents provide an

explanation on their face. For your convenience, we have marked the information release of which would identify or tend to identify the witnesses. This information may be withheld from required public disclosure under section 3(a)(8). The remainder of Exhibit E must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-102a.

Yours very truly,



Mary R. Crouter  
Assistant Attorney General  
Opinion Committee

MRC/GK/nhb

Enclosure: Marked Documents

Ref.: ID# 14963  
ID# 14977

cc: Mr. Jose J. Tejada, Jr.  
P. O. Box 125 #710  
El Paso, Texas 79999